

**UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND**

THOMAS WILSON, JOHN GALVAGNO,)	
ERICA CRUZ, Individually and on Behalf of)	
All Others Similarly Situated,)	
)	
Plaintiffs,)	
)	
vs.)	No.
)	
PL PHASE ONE OPERATIONS L.P. d/b/a,)	
XFINITY LIVE! PHILADELPHIA AND 1100)	
SOCIAL)	
)	
Defendant.)	
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NOTICE OF REMOVAL

COMES NOW Defendant PL Phase One Operations L.P. d/b/a Xfinity Live! Philadelphia and 1100 Social (“Xfinity”), by and through its counsel, Kelley Drye & Warren LLP, and respectfully requests that this action be removed from the Circuit Court for Baltimore City, Maryland to the United States District Court for the District of Maryland under 28 U.S.C. § 1441(a) on the grounds of federal question jurisdiction, 28 U.S.C. § 1331.¹ In support of this Notice of Removal, Xfinity alleges as follows:

BACKGROUND

1. On July 30, 2018, plaintiffs Thomas Wilson, John Galvagno, and Erica Cruz (hereinafter, “Plaintiffs”) filed a copy of the Class Action Petition for Damages (the “Complaint”), attached hereto as Exhibit B. The Complaint was filed on behalf of plaintiffs and a proposed class of similarly situated persons against Xfinity in the Circuit Court for Baltimore City, Maryland, asserting putative class claims. This Action is captioned in the State Court as follows: *Thomas Wilson, John Galvagno, and Erica Cruz, individually and on behalf of others*

¹ By removing this case, Xfinity does not waive, but expressly reserves, any and all defenses available to it, including, without limitation, personal jurisdiction.

similarly situated v. PL Phase One Operations L.P. d/b/a XFINITY LIVE! Philadelphia and 1100 Social, Case No. 24-C-18-004394 (“Action”).

2. Plaintiffs did not serve Xfinity with a copy of the complaint when they commenced the Action.

3. Plaintiffs allege that Xfinity is liable to Plaintiffs and each putative class member for statutory and regulatory violations of the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, *et seq.*, and 47 C.F.R. § 64.1200, *et seq.* (Compl. ¶¶ 78-80, Counts I-III.)

4. Specifically, Plaintiffs assert three causes of actions against Xfinity: Count I, Violations of the TCPA, 47 U.S.C. § 227(b)(1)(A)(iii); Count II, Violations of the TCPA, 47 C.F.R. § 64.1200(d); and Count III, Violations of the TCPA, 47 U.S.C. § 227(c) and 47 C.F.R. § 64.1200(c)(2). (Compl. ¶¶ 87-117.)

5. Based on the allegations of the Complaint and for the reasons discussed below, Xfinity timely removes this Action pursuant to 28 U.S.C. § 1331 (federal question).

FEDERAL QUESTION JURISDICTION

6. This Action may be removed pursuant to 28 U.S.C. § 1441(a) if it is one “of which the districts courts have original jurisdiction.”

7. This Court has original jurisdiction over Counts I, II, and III of Plaintiffs’ Complaint, pursuant to 28 U.S.C. § 1331, because they are causes of action arising under the laws of the United States, namely the TCPA, 47 U.S.C. § 227, *et seq.*, and its implementing regulations, 47 C.F.R. § 64.1200, *et seq.* (Compl. Counts I – III.)

8. On January 18, 2012, the United States Supreme Court issued its decision in *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368 (2012) and found, in a unanimous decision, that

the TCPA's grant of jurisdiction to state courts does not deprive federal district courts of federal-question jurisdiction over private rights of action with respect to claims arising out of the TCPA. *Id.* at 368.

9. Accordingly, removal of this Action is proper on the sole basis that, pursuant to 28 U.S.C. § 1331, this Court has federal question jurisdiction over Plaintiffs' claims, and is timely and properly removed by the filing of this Notice.

**DEFENDANT HAS SATISFIED THE PROCEDURAL REQUIREMENTS FOR
REMOVAL**

10. Because this Court may exercise original jurisdiction over this Action pursuant to 28 U.S.C. § 1331 (federal question), removal is proper pursuant to 28 U.S.C. § 1441(a).

11. The Notice of Removal is timely filed under 28 U.S.C. § 1446(b) because Xfinity was served with the summons on September 24, 2018, and is filing this Notice of Removal within thirty (30) days of service. *See Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347-48 (1999).

12. Defendant has not filed a responsive pleading in the Action.

13. Venue is proper in this District under 28 U.S.C. § 1446(a) because this District embraces the place where the removed action is pending.

14. In accordance with 28 U.S.C. § 1446(a) and L.R. 5(a), all process, pleadings, documents and orders served on Xfinity in this Action are annexed to this Notice of Removal as **Exhibits A-H**.

15. Contemporaneously herewith, Xfinity is providing Plaintiff written notice of the filing of this Notice of Removal as required by 28 U.S.C. § 1446(d).

16. Pursuant to the requirements of 28 U.S.C. § 1446(d), Xfinity files a copy of this Notice of Removal with the Clerk of the Circuit Court for Baltimore City, Maryland. A copy of that notice is attached hereto as **Exhibit I**.

17. This Notice of Removal is filed in the District Court of the United States for the district and division in which the case is pending.

WHEREFORE, Xfinity respectfully requests that the Action captioned as *Thomas Wilson, John Galvagno, and Erica Cruz, individually and on behalf of others similarly situated v. PL Phase One Operations L.P. d/b/a XFINITY LIVE! Philadelphia and 1100 Social*, Case No. 24-C-18-004394, pending in the Circuit Court for Baltimore City, Maryland be removed to this Court, and that this Court exercise its subject matter jurisdiction over this Action, and for such other relief as the Court may deem just and proper.

Dated: October 24, 2018

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By: /s/ Mindy B. Pava

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on this 24th day of October, 2018, the foregoing was sent via electronic and First Class mail to counsel for Plaintiff:

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